IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

Number 83, Original

STATE OF MARYLAND,
STATE OF ILLINOIS,
STATE OF INDIANA,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF MICHIGAN,
STATE OF NEW YORK,
STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
STATE OF WISCONSIN,

Plaintiffs

VERSUS

STATE OF LOUISIANA,

Defendant

ANSWER

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August 17, 1979

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STATE OF LOUISIANA,

Defendant

ANSWER

The State of Louisiana, defendant, for its answer to the complaint heretofore filed in the above captioned cause, admits, denies, and alleges as follows:

I.

For answer to paragraph I of plaintiffs' complaint, Louisiana denies that the original jurisdiction of this Court is properly invoked herein. Further answering, Louisiana contends that plaintiffs have available to them, by way of intervention, an appropriate forum in which the issues tendered here may be litigated.

II.

For answer to paragraph II of plaintiffs' complaint, Louisiana contends that no answer is deemed necessary to the paragraph but, if an answer would be necessary or helpful, Louisiana shows that the statutes themselves are the best and only legally admissible evidence of their contents. Louisiana denies that any of plaintiffs' constitutional rights or protections have been violated or that an injunction is appropriate or necessary.

III.

For answer to paragraph III of plaintiffs' complaint, the capacity and legal status of the plaintiffs are admitted but each and every other allegation in paragraph III is denied. Plaintiffs' standing is challenged to assert this action either in their proprietary capacity or as parens patriae on behalf of their respective citizens, for the reasons heretofore and hereinafter asserted. Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations that plaintiffs are substantial purchasers of gas affected by the First Use Tax or about any monetary damages which may be suffered by plaintiffs as a result of the tax.

IV.

For answer to paragraph IV of plaintiffs' complaint, Louisiana admits that it is the defendant.

V.

For answer to paragraph V of plaintiffs' complaint, Louisiana contends that the paragraph is no more than a reference to a portion of the Louisiana First Use Tax Statute. Louisiana again avers that the statute in question in its entirety is the only legally admissible proof of its contents and denies any allegation which would alter, amend, extend, or vary the statute either in language, meaning, or in context.

VI.

For answer to paragraph VI of plaintiffs' complaint, Louisiana shows that the quoted language is no more than an excerpt from Louisiana's First Use Tax Statute.

VII.

For answer to paragraph VII of plaintiffs' complaint, Louisiana contends that this paragraph merely quotes and paraphrases portions of Louisiana's First Use Tax Statute.

VIII.

For answer to paragraph VIII of plaintiffs' complaint, Louisiana contends that the paragraph is no more than a reference to a portion of the Louisiana First Use Tax Statute. Louisiana again avers that the statute in question in its entirety is the only legally admissible proof of its contents and denies any allegation which would alter, amend, extend, or vary the statute either in language, meaning, or in context.

IX.

For answer to paragraph IX of plaintiffs' complaint, Louisiana contends that the paragraph is no more than a reference to a portion of the Louisiana First Use Tax Statute. Louisiana again avers that the statute in question in its entirety is the only legally admissible proof of its contents and denies any allegation which would alter, amend, extend, or vary the statute either in language, meaning, or in context.

X.

For answer to paragraph X of plaintiffs' complaint, each and every allegation of the paragraph as stated is denied. Futher answering, Louisiana shows that its First Use Tax has no more of a national significance or effect than any other state's validly adopted revenue method.

XI.

For answer to paragraph XI of plaintiffs' complaint, Louisiana denies each and every allegation of the paragraph and further shows that its First Use Tax Statute is the best evidence as to the persons liable for the payment of any tax imposed upon specified uses occurring within the State of Louisiana.

XII.

For answer to paragraph XII of plaintiffs' complaint, Louisiana denies each and every allegation of the paragraph.

XIII.

For answer to paragraph XIII of plaintiffs' complaint, Louisiana contends that the cases, orders, and proceedings mentioned in the paragraph are themselves the best evidence of their content.

XIV.

For answer to paragraph XIV of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations; Louisiana contends that its First Use Tax is but one element of cost attributable to consumers of gas.

XV.

For answer to paragraph XV of plaintiffs' complaint, Louisiana denies that either the plaintiff states or their citizens will be subject to the tax and avers on the contrary that it is only the statutory uses of the gas within the State of Louisiana which are the subject of the tax. Further, Louisiana contends that the economic impact upon plaintiff states or their citizens is the same as flows from any tax imposed by any state affecting any commodity. Louisiana alleges that it is without knowl-

edge or information sufficient to form a belief as to the truth of plaintiffs' allegations concerning which gas pipeline companies deliver gas to plaintiffs.

XVI.

For answer to paragraph XVI of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XVII.

For answer to paragraph XVII of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XVIII.

For answer to paragraph XVIII of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming

states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XIX.

For answer to paragraph XIX of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XX.

For answer to paragraph XX of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXI.

For answer to paragraph XXI of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXII.

For answer to paragraph XXII of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXIII.

For answer to paragraph XXIII of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXIV.

For answer to paragraph XXIV of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXV.

For answer to paragraph XXV of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXVI.

For answer to paragraph XXVI of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XVII.

For answer to paragraph XXVII of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXVIII.

For answer to paragraph XXVIII of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXIX.

For answer to paragraph XXIX of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXX.

For answer to paragraph XXX of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXXI.

For answer to paragraph XXXI of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXXII.

For answer to paragraph XXXII of plaintiffs' complaint, Louisiana alleges that it is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations in the paragraph. In this connection, Louisiana further avers that the ultimate cost to the plaintiff states or their citizens is irrelevant because any tax imposed by any state on any commodity affects economically all other using or consuming states and their citizens. This truism has no bearing upon the constitutionality of this tax or other similar taxes.

XXXIII.

For answer to paragraph XXXIII of plaintiffs' complaint, Louisiana contends that no answer is necessary to the paragraph but, if an answer is deemed necessary or helpful, Louisiana answers paragraph XXXIII by adopting all of its answers previously set forth in paragraphs 1—XXXII.

XXXIV.

For answer to paragraph XXXIV of plaintiffs' complaint, Louisiana denies that the First Use Tax constitutes an unconstitutional burden on interstate commerce or that it vio-

lates in any respect the commerce clause or any other clause of the United States Constitution. Louisiana affirmatively alleges that the tax does not burden natural gas moving in interstate commerce and is in fact applied to activities which occur within Louisiana's boundaries and have a substantial nexus with the state, is fairly apportioned, does not discriminate against interstate or foreign commerce and is fairly related to the cost burdens imposed upon Louisiana by the subject of the tax and directly related to the value of the benefits and services provided by the state. Therefore, Louisiana specifically denies each and every allegation of this paragraph and affirmatively avers that the First Use Tax meets all constitutional objections raised herein by the plaintiffs.

XXXV.

For answer to paragraph XXXV of plaintiffs' complaint, Louisiana denies the interstate character of the gas the use of which is subject to the First Use Tax. Louisiana contends that the uses defined in the First Use Tax Law occur prior to the inception of interstate commerce. The activities described as uses by the statute constitute significant and necessary activities prior to the marketing of natural gas, are not integral to the movement of such gas through the State of Louisiana and are not performed at any point in the interstate commerce stream. The tax is imposed on the uses defined in the statute and not upon the privilege of transporting the product in interstate commerce; the uses described are unique to the services performed in Louisiana and constitute significant and necessary activities in the refinement, processing, storing, and transformation of the gas into a marketable commodity for ultimate consumption.

XXXVI.

For answer to paragraph XXXVI of plaintiffs' complaint, Louisiana denies each and every allegation of the para-

graph and avers that the nature of, and necessity for, the uses involved establishes a sufficient and adequate connection with the State of Louisiana to justify the imposition of a First Use Tax. None of the language of the act is vague or uncertain; instead, the statute clearly establishes an adequate constitutional nexus with the State of Louisiana to justify and uphold its clarity and validity.

XXXVII.

For answer to paragraph XXXVII of plaintiffs' complaint, Louisiana denies each and every allegation of the paragraph and avers on the contrary that the First Use Tax is fairly apportioned, is imposed on certain local uses described therein which fairly relate to the transformation and improvements made in the product and are directly connected with facilities, investment, business activities, and other direct connections with the State of Louisiana, including tax exemptions, transformation in quality of the product, and maintenance of the same in storage facilities. The tax is imposed directly on certain statutorily defined uses and not on the natural gas itself; indeed, Section 1303(e) of the First Use Tax specifically provides that it shall not be construed "as imposing any tax on the production, severance or ownership of natural gas produced outside the boundaries of the State of Louisiana . . ." Further, the statute in question makes crystal clear "that the incidence of this tax shall not be upon the natural gas nor upon the property or rights from which it is produced, but rather shall only be upon the privilege of performance or allowing the performance by the owner of the enumerated actions comprising first use within the state."

XXXVIII.

For answer to paragraph XXXVIII of plaintiffs' complaint, Louisiana denies the relevancy of all of plaintiffs' pre-

sumptive allegations in connection with actions which other states may take. Louisiana further avers that the uses taxed are unique and peculiar to Louisiana as the first state of entry and involve the necessary preparation of the product in question for transportation and ultimate consumption. Thereafter, no similar activities are, or need be, performed within another state. Louisiana consequently denies both the relevancy and factual accuracy of each and every allegation in paragraph XXXVIII of plaintiffs' complaint.

XXXIX.

For answer to paragraph XXXIX of plaintiffs' complaint, the Louisiana First Use Tax does not discriminate against interstate commerce; instead, it represents a legal, valid, and constitutional exercise of Louisiana's power to tax the uses and incidents as described in the statute.

XL.

For answer to paragraph XL of plaintiffs' complaint, the First Use Tax does not discriminate against interstate commerce because an equivalent tax is in fact imposed as a severance tax upon all gas produced within the State of Louisiana and sold there or elsewhere. Moreover, any OCS gas to which the First Use Tax applies which is sold and consumed in Louisiana bears an equal share of the First Use Tax with the plaintiff states and others involved in the interstate commerce stream. Louisiana again denies that the gas taxed by the First Use Tax is moving in interstate or foreign commerce at the time it is transported into Louisiana, and denies that this gas continues in interstate commerce, without interruption, until it is transported out of Louisiana or sold at wholesale for ultimate consumption within Louisiana.

XLI.

For answer to paragraph XLI of plaintiffs' complaint, Louisiana avers the First Use Tax and the various credits, exemptions or adjustments allowed under that statute do not discriminate because:

(a) The tax falls uniformly on all taxpayers liable for the tax;

(b) The discrimination or disadvantage that has long been borne by owners of gas produced within the territorial boundaries of Louisiana is removed by taxing the owners of gas which is used in Louisiana, but which, prior to introduction into the territorial boundaries of the State of Louisiana, is not otherwise subject to a severance tax, tax on volume of production, or characterization as an import;

(c) A reasonable, rational allocation of the tax burden upon owners of natural gas is provided thereby, ensuring that owners of natural gas already subjected to and bearing a severance tax, a tax on volume of production, or characterization as an import, are not subjected to an onerous tax burden;

(d) The conferring of similar credits, exemptions or adjustments based on subsequent events occurring beyond the taxing jurisdiction of the State would not be feasible for such events are beyond the authority of the State to regulate in furtherance of its pronounced public policy and such events are not susceptible, as a practical matter, to adequate policing to insure verification; and

(e) Taxes on local activities which affect the cost of products reaching interstate commerce are ultimately borne by non-local consumers; this does not render the local tax invalid.

XLII.

For answer to paragraph XLII of plaintiffs' complaint, Louisiana admits a statutory exemption contained in the First Use Tax for natural gas used or consumed in the manufacture of fertilizer and anhydrous ammonia but denies that this exemption renders the act unconstitutional. Such exemptions are entirely within the scope of legislative prerogative and represent fair and proper inducements for the manufacture of products sorely needed by the State of Louisiana and by the agricultural community throughout the United States. Such exemptions are supported by sound public purpose and the proper exercise of legislative discretion and do not discriminate or render the act in question unconstitutional. Furthermore, Louisiana now avers the provision of Section 2 of the act which provides in essence that the invalidity of any item or provision of the act shall not affect other provisions, items or application, and that the provisions of the act are severable.

XLIII.

For answer to paragraph XLIII of plaintiffs' complaint, the tax is fairly related to its express purpose, as will be shown more fully upon the evidentiary hearing requested herein. The production, transportation, metering, interchange, refinement, and processing facilities necessary to accomplish the uses made the subject of the tax have for many years produced meaningful, significant, and irreversible effects upon Louisiana's waterbottom, barrier reefs, and sensitive shorelines. These facilities have also caused hazards and exposures to Louisiana's environment and to the safety of her citizens. Furthermore, Louisiana is losing a tangible unit in excess of sixteen square miles of land annually; a substantial portion of this land loss is attributable to the existence of canals, trenches, and spoil banks made to serve the owners and marketers of the gas in question. Although Congress has recognized these problems and has

adopted the Coastal Energy Impact Program to fund maintenance and construction projects designed to offset the adverse impact suffered by coastal states affected by energy development necessary to supply the demands of the entire nation, Congress has not adequately funded these programs. Presently Louisiana has in excess of $500,000,000 in impacts which could qualify for coastal energy impact program funds but which cannot be received due to insufficient federal appropriations and grant allocation formula criteria. Louisiana has experienced net losses in excess of $40,000,000 annually expended on government services required for the OCS development. Therefore, Louisiana avers on the contrary to the plaintiffs's allegations that there is a fair, accurate, and reasonable relationship between the First Use Tax and the costs, burdens, and impacts now being suffered by Louisiana. Louisiana users pay a severance tax equivalent in amount to that of the First Use Tax. Finally, although no similar tax is imposed on other forms of transportation, such as barges and shipping, this fact is without relevance to this controversy as it is addressed to sound legislative discretion and not to judicial inquiry.

XLIV.

For answer to paragraph XLIV of plaintiffs' complaint, Louisiana admits that the First Use Tax is imposed at the same rate as the Louisiana severance tax. For all the reasons set forth in the preceding paragraph [paragraph XLIII] and as will be demonstrated more fully and clearly during the hearing to be had herein, the economic impact sought to be redressed by the imposition of the First Use Tax is substantially larger than that involved in the intrastate severance tax.

XLV.

For answer to paragraph XLV of plaintiffs' complaint, Louisiana again alleges that the First Use Tax is directly re-

lated and reasonably apportioned to the impact of the activity in question upon the State of Louisiana and, in fact, bears a rational relationship to the activities, impacts, detriments, and benefits relating to the entire industry in question. In this connection, Louisiana further shows that these factual controversies underscore the need for an evidentiary hearing to demonstrate the direct relationship between the First Use Tax and the activities giving rise thereto, measure the adverse impact of such activities on the shorelines and environment of Louisiana, and determine the costs to state and local government in support of these activities.

XLVI.

For answer to paragraph XLVI of plaintiffs' complaint, Louisiana believes that no answer is necessary to that paragraph but, if an answer is deemed necessary or helpful, Louisiana answers paragraph XLVI by adopting all of its answers previously set forth in paragraphs I—XXXII.

XLVII.

For answer to paragraph XLVII of plaintiffs' complaint, Louisiana believes that this paragraph is merely a legal conclusion on the part of the plaintiffs and, therefore, requires no answer. However, if an answer is necessary or helpful, Louisiana avers that the First Use Tax is not in conflict with or repugnant to any constitutional provision, statute, or regulation and, consequently, is a legal, valid, and proper exercise of Louisiana's police and taxing powers.

XLVIII.

For answer to paragraph XLVIII of plaintiffs' complaint, the First Use Tax is not an attempted regulation of gas dedicated to interstate commerce and does not conflict with any rule, regulation, or jurisdictional authority of the Department

of Energy or FERC. None of the federal statutes cited in plaintiffs' complaint prohibit or preempt the right of a state to impose a tax on local activities.

XLIX.

For answer to paragraph XLIX of plaintiffs' complaint, the First Use Tax does not conflict with any federal statute and does not violate any portions, aspects, or combinations of federal acts; on the contrary, it is a proper exercise of Louisiana's police and taxing powers on operations conducted entirely within the boundaries of the State of Louisiana. The statutory citations contained in plaintiffs' petition in no way prohibit the State of Louisiana from taxing local incidents that have some connection with subsequent interstate activities under the regulatory jurisdiction of any federal agency. Louisiana also denies that the federal statutes cited constitute such a comprehensive scheme as to preempt Louisiana from adopting a first use tax.

L.

For answer to paragraph L of plaintiffs' complaint, the statutes, both federal and state, speak for themselves and the individual contracts are the best evidence of their contents. As these contracts differ substantially in form and meaning, and are made between various parties with differing consequences, plaintiffs cannot facilely assume the tax's effect on gas contracts.

LI.

For answer to paragraph LI of plaintiffs' complaint, the First Use Tax is not imposed on the production, severance, or ownership of *natural gas* but only upon the performance of certain specific uses within the State of Louisiana. Hence it does not violate the Outer Continental Shelf Lands Act.

LII.

For answer to paragraph LII of plaintiffs' complaint, Louisiana believes that no answer is necessary to that paragraph but, if an answer is deemed necessary or helpful, Louisiana answers paragraph LII by adopting all of its answers previously set forth in paragraphs I—XXXII.

LIII.

For answer to paragraph LIII of plaintiffs' complaint, Louisiana denies that the First Use Tax applies to gas imported into Louisiana from a foreign country and, therefore, denies that the statute contravenes or violates the constitutional provision mentioned in this paragraph.

LIV.

For answer to paragraph LIV of plaintiffs' complaint, Louisiana denies the allegations of this paragraph and affirmatively avers that the First Use Tax does not apply to any gas imported into Louisiana from a foreign country.

LV.

For answer to paragraph LV of plaintiffs' complaint, Louisiana denies both the facts and legal conclusions contained in this paragraph. Clearly under Article I, Section 10, Clause 2 of the United States Constitution, only the federal government may levy an impost or duty on imports. This taxing authority over imports subjects all natural gas imported from a foreign country to a levy of a federal impost or duty. Being subject to such a levy exempts all natural gas imported from a foreign country from the imposition of the Louisiana First Use Tax because of the gas' character as an import, whether or not any federal levy is actually imposed.

LVI.

For answer to paragraph LVI of plaintiffs' complaint, as the First Use Tax does not apply to the importation of foreign products, Louisiana denies that the foreign trade policy of the federal government will be complicated by the tax.

LVII.

For answer to paragraph LVII of plaintiffs' complaint, Louisiana profoundly hopes and therefore alleges that its First Use Tax will not disturb the harmony among the states. The tax is imposed upon substantial activities conducted within the boundaries of Louisiana which have a significant economic, environmental and safety impact upon the State of Louisiana and all of its citizens; the tax is fairly related to the purposes sought to be compensated and to the cost of government in maintaining and supporting the industry in question. Moreover, the First Use Tax is paid by Louisiana citizens who use this gas at the same rate as the citizens of any other state. As a matter of fact, whether the gas originates in the OCS or in Louisiana, the tax rate is the same — seven cents per thousand cubic feet. Louisiana therefore alleges that its First Use Tax is just, fair, and indiscriminate and that the citizens of other states should bear their fair proportion of the cost of maintaining the industry which provides our nation with a substantial portion of its energy at rates equivalent to those paid by Louisiana citizens and reasonably connected with the costs, risks, and hazards imposed upon Louisiana and her inhabitants.

LVIII.

For answer to paragraph LVIII of plaintiffs' complaint, Louisiana denies that the First Use Tax is a direct tax on imports in transit.

LIX.

For answer to paragraph LIX of plaintiffs' complaint, Louisiana believes that no answer is necessary to that paragraph but, if an answer is deemed necessary or helpful, Louisiana answers paragraph LIX by adopting all of its answers previously set forth in paragraphs I—XXXII.

LX.

For answer to paragraph LX of plaintiffs' complaint, Louisiana denies that any contract has been voided by the First Use Tax and alleges on the contrary that the sole purpose, intent, and application of the statutory language quoted in this paragraph has been to ensure that the First Use Tax will not unreasonably burden any person within the interstate commerce stream but will be passed along to the ultimate users and consumers. Because the tax will be borne by the ultimate users and consumers, neither party to the contracts in question suffers.

LXI.

For answer to paragraph LXI of plaintiffs' complaint, Louisiana believes that no answer is necessary to that paragraph but, if an answer is deemed necessary or helpful, Louisiana answers paragraph LXI by adopting all of its answers previously set forth in paragraphs I—XXXII.

LXII.

For answer to paragraph LXII of plaintiffs' complaint, Louisiana denies that plaintiff states and their citizens are denied equal protection of the law and alleges on the contrary that they are merely asked to bear their fair portion of the cost of supporting an industry which provides them with a major source of energy.

LXIII.

For answer to paragraph LXIII of plaintiffs' complaint, Louisiana denies each and every allegation of the paragraph.

LXIV.

For answer to paragraph LXIV of plaintiffs' complaint, Louisiana contends that the paragraph is no more than a reference to a statute relating to a severance tax credit. Further answering, Louisiana shows that this provision is in complete harmony with Congress's intent and purpose in adopting the Natural Gas Policy Act and particularly §110 thereof.

LXV.

For anwser to paragraph LXV of plaintiffs' complaint, Louisiana denies each and every allegation of the paragraph.

LXVI.

For answer to paragraph LXVI of plaintiffs' complaint, each and every allegation of the paragraph as stated is denied.

Further answering, Louisiana shows the statutes mentioned in paragraph LXVI of the complaint are separate and distinct, neither relying for its validity on a constitutional interpretation of the other. Tax credits are reflective of Louisiana's continuing attempt to attract industry and thereby encourage development of Louisiana's natural resources. The severance tax credit is allowed on a priority basis upon the various minerals involved. The credit for gas is not currently permitted. At such time as it may be permitted, the priority will be so low that, from a practical standpoint, there is little likelihood that the credit will ever be applicable. Indeed, if the intent of Congress as evidenced in Section 110 of the Natural Gas Policy Act of 1978 is carried out by the Federal Energy Regulatory Commission, the flow-through concept fashioned by Congress in that Act will prevent any application of the tax credit.

All taxpayers liable for the First Use Tax are classified and taxed on an equal basis. The severance tax credit is allowable for any taxpayer subjected to a Louisiana severance tax. There exists no unreasonable classification because all taxpayers are treated equally and on the same basis; that is, all must pay the First Use Tax and all may claim the severance tax credit where applicable.

The severance tax credit allowed against severance taxes due Louisiana is a valid exercise of the police and taxing powers of the State. It prohibits the levying of an onerous tax burden upon taxpayers who have been compensating the State for services and benefits received and for adverse effects caused.

LXVII.

Further answering, Louisiana alleges that plaintiff states are without standing to institute and prosecute this action, and this Court has no original jurisdiction of this cause, all for the reasons set forth in Louisiana's brief in opposition to plaintiffs' motion for leave to file complaint herein. Plaintiff states have other judicial remedies available to them by way of intervention in pending legal proceedings in the courts of Louisiana through which the issues sought to be raised here may be fully litigated and, if necessary, ultimately brought to this Court by direct appeal.

LXVIII.

Louisiana further asserts that the original jurisdiction of this Court should be invoked only sparingly in order that this Honorable Court should not become the potential principal forum for settling the frequent controversies between residents of different states concerning the multitude of disputes over possible applications of various state laws.

LXIX.

In the alternative, however, and only in the event this Honorable Court should determine to pursue jurisdiction in this case, then Louisiana avers that the First Use Tax represents a legal, valid, and constitutional exercise of the police and taxing power of the state and does not violate or conflict with any provision of the United States Constitution or any laws, rules, regulations, or scheme of legislation of the federal government.

LXX.

Further in the alternative, Louisiana avers that many factual controversies have been raised by the pleadings herein and extensive evidentiary hearings will be necessary to hear and receive proof and facts in support thereof. Louisiana expects to offer considerable evidence in support of its allegations and in opposition to the factual arguments made by plaintiffs; particularly, Louisiana expects to offer competent evidence of the factual basis for its defense in order to prove:

(1) The close connection between the activities being taxed and the State of Louisiana;

(2) The nature and extent of environmental damage sustained by Louisiana as a consequence of the taxed activity associated with the preparation for marketing of the affected gas;

(3) The additional and substantial costs and burdens imposed upon state and local government as a consequence of the activities necessary to develop and market the gas affected by the tax;

(4) The non-discriminating character of the tax in question;

(5) A rational and reasonable basis and public policy in support of the First Use Tax, its stimulation of energy production, and its fair contribution to the support of the costs, burdens, risks, and hazards necessarily resulting to Louisiana or any other state of first entry of OCS gas;

(6) The nature of and necessity for the taxed activities prior to marketing of the gas for ultimate consumption;

(7) That the gas affected by the tax is not in interstate commerce at the time of occurrence of any local use taxed; and

(8) That the tax in question has no effect on gas characterized as an import from a foreign country.

Louisiana, having fully answered the complaint herein, prays this Court to enter a judgment that plaintiff states are without standing to institute and prosecute this action and that this Court has no original jurisdiction concerning this cause; that if such jurisdiction does lie, Louisiana's accompanying motion for the appointment of a special master be granted; and that in due course the demands of the plaintiff states be rejected at their costs and that Louisiana be granted such other relief as it may be entitled to in the premises.

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CERTIFICATE OF SERVICE

I, ROBERT G. PUGH, one of the attorneys for the State of Louisiana in the above-entitled proceeding, being a member of the Bar of the Supreme Court of the United States, do hereby certify that, on the 17th day of August, 1979, I served copies of the answer, by mailing three copies thereof in duly addressed envelopes, with postage prepaid, to:

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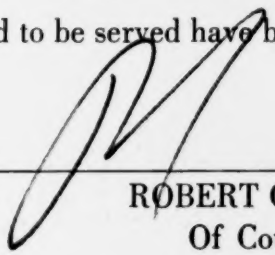
All parties required to be served have been served.



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